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## Article 3: Commercial Paper

Robert A. Gorfinkle

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their unfitness for such use with resulting damages to the buyer. Held counterclaim demurrable it appearing that the buyer accepted the materials and indicated acceptance under Section 2-606 by acts inconsistent with seller's ownership through processing and sales to third persons.

### ARTICLE 3: COMMERCIAL PAPER

#### SECTION 3-115. Incomplete Instruments

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, . . .

(2) If the completion is unauthorized the rules as to material alteration apply (Section 3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

**Fidelity Trust Company v. Gardiner**, 191 Pa. Super. 17, 155 A.2d 405 (1959)

Where a note, accompanied by a contract signed on a form bearing the printed name of the contractor with whom the makers had been falsely led to believe they were contracting and also containing blanks for the insertion of specifications unrelated to the subject matter of the work to be performed, was negotiated to a holder who also received the written contract, the makers were entitled to the benefit of the Incomplete Instruments provisions of Section 3-115, it appearing that the contract as transferred to the holder had been altered by the excision of the printed name of the contractor as it originally appeared on the document and the insertion by rubber stamp of the name of the firm with whom the makers had unwittingly contracted.

#### SECTION 3-302. Holder in Due Course

- (1) A holder in due course is a holder who takes the instrument
  - (a) for value; and
  - (b) in good faith; and
  - (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

**The First National Bank v. Anderson**, 7 Pa. D. & C. 2d 661 (1956)

A bank, as a holder of a judgment note, may be a holder in due course under Section 3-302 despite the fact that it made no inquiry of the payee or maker as to whether the contract for which the note was given had been satisfactorily completed. There was no evidence that the failure to make such inquiry constituted a divergence from common banking or commercial practice.

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(Where a cited case interprets only a portion of a Code section only that portion is set out)

N.B. This case was decided under the 1953 draft of the Code in which Section 3-302(1)(b) read: "(b) in good faith including observance of the reasonable commercial standards of any business in which the holder may be engaged."

**First Pennsylvania Banking and Trust Co. v. De Lise**, 186 Pa. Super. 398, 142 A.2d 401 (1958)

A holder in due course is a holder who takes the instrument without notice that it is overdue or has been dishonored or of any defense against it.

N.B. This case is decided under the 1953 draft of the Code. See *Anderson* case, *supra*.

**Budget Charge Accounts v. Mullaney**, 187 Pa. Super. 190, 144 A.2d 438 (1958), noted 10 Mercer L. Rev. 211.

Where defense of fraud is meritorious as to the original payee, a person claiming to be a holder in due course of note under Section 3-302 has the burden of proving that he took with no knowledge of dishonor of the note, or of the existence of the valid defense.

N.B. This case is decided under the 1953 draft of the Code. See *Anderson* case, *supra*.

#### SECTION 3-305. Rights of a Holder in Due Course

To the extent that a holder is a holder in due course he takes the instrument free from . . .

(2) All defenses of any party to the instrument with whom the holder has not dealt except . . .

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; . . .

**The First National Bank v. Anderson**, 7 Pa. D. & C. 2d 661 (1956)

Where co-makers of judgment note claiming fraud in the factum as a defense against a holder in due course failed to read the instrument they signed, their defense is unavailing under Section 3-305 even though one of the makers had little formal education, the second claimed the print was too fine for her to read, and the third, on whom the other two relied for a reading did not do so because the agent of the payee talked during the time of the signing.

#### SECTION 3-307. Burden of Establishing Signatures, Defenses and Due Course

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

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(Where a cited case interprets only a portion of a Code section only that portion is set out)

**First Pennsylvania Banking and Trust Co. v. De Lise**, 186 Pa. Super. 398, 142 A.2d 401 (1958)

Where makers of note contend that they were induced by fraud to sign and that they notified the bank that they would not pay the note the payee either intended or had assigned, and the bank, as holder of the note, introduced no testimony as to the circumstances under which the note was negotiated, the bank failed to establish, under section 3-307(3) that it, or some person under whom it claimed, was in all respects a holder in due course.

#### **SECTION 3-401. Signature**

(1) No person is liable on an instrument unless his signature appears thereon.

**Grange Nat. Bank, etc. v. Conville**, 8 Pa. D. & C. 2d 616 (1957)

Where two notes were executed by the president and secretary of a corporation, on one note their signatures followed, and on the other preceded, by the corporate name, without indicating their position and representative capacity, the corporation is not liable as a maker under Section 3-401(1) even though the president and secretary had been authorized to sign it, for the notes fail to show that the signatures were made on behalf of the company. On the first note the corporate seal appeared after the corporate name.

#### **SECTION 3-402. Signature in Ambiguous Capacity**

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

**Grange Nat. Bank, etc. v. Conville**, 8 Pa. D. & C. 2d 616 (1957)

Where two notes were executed by the president and secretary of a corporation, on the one note their signatures followed, and on the other preceded, by the corporate name, they are personally liable under Section 3-402 since the instruments do not clearly show that their signatures are only on behalf of another named on the paper, to wit, the corporation. Under Section 3-402 any doubts are to be resolved against the representative.

#### **SECTION 3-403. Signature by Authorized Representative**

(2) An authorized representative who signs his own name to an instrument

- (a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;
- (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity . . . .

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(Where a cited case interprets only a portion of a Code section only that portion is set out)

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

**Grange Nat. Bank, etc. v. Conville**, 8 Pa. D. & C. 2d 616 (1957)

Where two notes were executed by the president and secretary of a corporation, on the one note their signatures followed, and on the other preceded, by the corporate name, they are personally liable under Section 3-403 since the instruments themselves do not clearly show that their signatures are only on behalf of another named on the paper, to wit, the corporation. Under this section any doubts are to be resolved against the representative.

N.B. This case was decided under the 1953 draft of the Code, in which Section 3-403(2) read: "An authorized representative who signs his own name to an instrument is also personally obligated unless the instrument names the person represented and shows that the signature is made in a representative capacity. The name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity." There was no Section 3-403(3) in the 1953 draft of the Code.

#### **SECTION 3-407. Alteration**

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

- (a) the number or relations of the parties; or
- (b) an incomplete instrument, by completing it otherwise than as authorized; or
- (c) the writing as signed, by adding to it or by removing any part of it.

**Fidelity Trust Company v. Gardiner**, 191 Pa. Super. 17, 155 A.2d 405 (1959)

Where a note, accompanied by a contract signed on a form bearing the printed name of the contractor with whom the makers had been falsely led to believe they were contracting and also containing blanks for the insertion of specifications unrelated to the subject matter of the work to be performed, was negotiated to a holder who also received the written contract, the makers were entitled to the benefit of the Alteration provisions of Section 3-407, it appearing that the contract as transferred to the holder had been altered by the excision of the printed name of the contractor as it originally appeared on the document and the insertion by rubber stamp of the name of the firm with whom the makers had unwittingly contracted.

#### **SECTION 3-508. Notice of Dishonor**

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. . . .

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(Where a cited case interprets only a portion of a Code section only that portion is set out)

**First Pennsylvania Banking and Trust Co. v. De Lise**, 186 Pa. Super. 398, 142 A.2d 401 (1958)

Since notice of dishonor may be given in any reasonable manner, oral or written, in terms which identify the instrument and state that it has been dishonored, a maker's telephone call to the bank holding the note, advising it of her refusal to pay unless certain things were done, is sufficient.

#### ARTICLE 6: BULK TRANSFERS

##### **SECTION 6-102. "Bulk Transfer"; Transfers of Equipment; Enterprises Subject to This Article; Bulk Transfer Subject to This Article.**

(3) The enterprises subject to this Article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

**Market v. College Offset Press, Inc.**, 6 Pa. D. & C. 2d 519 (1955)

A printing business is not an enterprise under Section 6-102 in the absence of an averment that its principal business is the sale of merchandise from stock.

##### **SECTION 6-111. Limitations of Actions and Levies**

No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods. . . .

**Trau & Loevner v. Routman**, 6 Pa. D. & C. 2d 164 (1955)

In a fraudulent debtor's attachment proceeding, it appearing that the alleged fraudulent act was committed more than six months prior to the issuance of an alias writ, the original writ which was issued within six months being invalid, the alias writ must be dismissed on the garnishee's objection under Section 6-111.

#### ARTICLE 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

##### **SECTION 9-107. Definitions: "Purchase Money Security Interest"**

A security interest is a "purchase money security interest" to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

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(Where a cited case interprets only a portion of a Code section only that portion is set out)